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09/637,843	08/10/2000	James Francis Ulrich	00-107	7091

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/637,843
Filing Date: August 10, 2000
Appellant(s): ULRICH ET AL.

Jerry Burgan
For Appellant

MAILED
SEP 26 2005
GROUP 1700

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 6, 2005 appealing from the Office action mailed May 23, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-25 and 73.

Claims 26-72 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect. The rejection of the claims under 35 USC 103 was dropped in the Advisory action, dated May 23, 2005, leaving only a requirement for applicant to resolve the issue relating to the joint inventors.

Appellant's brief presents arguments relating to resolving the issue of joint inventorship. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,723,370

ULRICH et al

4-2004

Morrison, F. B. 1957. Feeds and Feeding, A Handbook for the Student and Stockman. Morrison Publishing Co., Ithaca, New York, pp. 424-425, 523-525, 1116-1119, 1124 & 1128.

Watson, S. A. et al. 1994. Corn: Chemistry and Technology., American Association of Cereal Chemists, Inc., St. Paul, Minnesota, pp. 45, 46, 313-316, 351-358, 360-366, 370-371, 408, 447-466 & 474.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corn Chemistry (Watson) in view of Morrison.

Watson discloses high oil corn at pages 4, 45, 46 and 313-316. The concept of using high oil corn in animal feeding is shown at page 315. The animal feeding studies showed the substitution of high oil corn for regular corn at page 316. Milling corn into corn meal is shown at pages 351-358, 457-458. The extraction and separation of fat from corn meal is shown in

Figure 1 on page 354. The use of cornmeal with other nutrients in food is shown at pages 364. The use of corn meal in animal feed is shown at pages 370-371, 447-450, 474 and 461-466. Flaking corn is shown to be a well-known process at pages 408. At Table I on page 448, the fat content and proximate analysis of corn meal is shown. The claims appear to differ from the reference in the suggestion of utilizing corn meal from high oil corn. It would have been obvious to one having ordinary skill in the art to extract oil from high oil corn as a way to provide edible oil for human consumption. The use of high oil corn in place of regular corn would probably enhance the economic gains of a farmer who usually grows corn as a main cash crop. Thus to prepare corn meal from high oil corn versus regular corn would be an obvious matter of choice with regard to the extent of corn oil needed with any given year. Claim 1 also appears to differ in the suggestion of adding other nutrients to the corn. Morrison teaches that it is well known in the art to use corn meal in animal feeds. Morrison also teaches most if not all of the other nutrients shown in claims 6, 9, 11, 12, 13 and 15. Morrison also teaches the use of cornmeal in poultry, swine, equine and cattle feed. Although palletizing feed is not specifically shown in these references, animal feed is typically palletized.

(10) Response to Argument

Appellant argument that Watson does not disclose separating whole corn into oil and ground meal. This argument has been considered but is not persuasive because Figure 1 shows the overall process wherein whole corn is used as a starting material and is fractionated into corn meal in one fraction and corn oil in another fraction of the process. The reference appears to meet those requirements of the claims. The claims are directed to a product and not to a process and no criticality is seen from the multitude of sub steps taken between the whole corn and the final corn meal prepared, particularly when the oil of the corn is removed prior to the formation of the corn meal. Appellant argues that the references are not directed to processing high oil corn. But once the skill artisan obtains high oil corn, it would have been obvious to process it into standard corn products, such as corn meal.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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